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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the matter of)

AMENDMENT OF THE COMMISSION'S)
RULES TO ESTABLISH NEW)
PERSONAL COMMUNICATIONS)
SERVICES)

General Docket No. 90-314
ET Docket No. 92-100

To: The Commission

JOINT PETITION FOR FURTHER NOTICE OF PROPOSED RULEMAKING

ROCKY MOUNTAIN TELECOMMUNICATIONS
ASSOCIATION

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Dated: September 10, 1993

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SUMMARY

Rocky Mountain Telecommunications Association (RMTA) and Western Rural Telephone Association (WRTA) jointly petition the Commission to issue a further Notice of Proposed Rulemaking seeking public comment on the competitive bidding procedures as they are to be applied to the licensing of personal communications services (PCS). In particular, the Commission should take public comment on how the substantive rights of rural telephone companies and their customers, which were mandated by Congress in passing the Omnibus Budget Reconciliation Act of 1993, will be implemented with regard to PCS. Comments should also be taken on what portion of the available PCS spectrum should be allocated for rural service, in light of this Congressional mandate.

Public participation and further development of the record concerning these newly mandated Congressional safeguards would be consistent with the public interest, as well as the requirements of the Administrative Procedure Act (APA).

In light of Congress's designation of rural telephone companies as a "licensing objective," and its mandate to ensure the rapid deployment of new technologies and services to rural areas, it is respectfully submitted that the Commission's proposal to restrict the eligibility of cellular carriers for licensing PCS has been mooted, with regard to rural telephone carriers. Such carriers often have only a minority interest in cellular, with little or no say over management of the system. Thus, there is no realistic danger of anticompetitive behavior on the part of these telephone carriers, and other measures are available to allay any Commission concerns. Moreover, Congress' mandate that rural telephone interests be safeguarded overrides any proposal to limit rural telephone participation in PCS based on telephone company interests in a cellular licensee.

The Commission should implement specific protections of rural telephone company interests, in light of the dual mandate of Congress to provide such protection. Rural telephone companies face unique problems: (1) In western states, cities are usually surrounded by rural areas; yet, it is likely that the high bidder for each PCS frequency block will focus on the urban area; and (2) to the extent PCS service reaches rural areas, it will target the telephone companies' high-volume business customers, which "cream-skimming" would drive up telephone service costs, and may jeopardize residential service. Therefore, the Commission should set aside for rural telephone use a block of PCS spectrum in any basic trading area (BTA) (or other defined filing area) which contains a rural community. The telephone companies within that BTA would be allowed to submit a composite bid after the initial bidding process, and would be

awarded the spectrum so long as the composite bid equaled at least 70% of the high bid submitted by other filers.

A less desirable alternative would be to require that an urban licensee in a BTA containing rural areas utilized microcell technology, such that rural telephone companies could provide service to their certificated areas in the BTA without harmful interference; or the urban licensee could enter into an agreement with the telephone companies to operate their systems jointly. The high bid would be divided on a pro rata basis between the urban licensee and the telephone companies, based on the population within their respective areas of operation. The telephone carriers' portion of the bid would be discounted by 20-30% to reflect their higher costs of providing service.

Other safeguards should be adopted for all of the protected groups identified by Congress, including (1) bid multipliers; (2) extended payment schedules, pursuant to which payments would not be due until borrowed funds had been disbursed; (3) payment of at least a portion of the bid by royalty, which would fluctuate based on the amount of revenues received; (4) the issuance of tax certificates; and (5) the licensing of service areas small enough to encourage participation by these protected groups.

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Rocky Mountain Telecommunications Associations (RMTA) and the Western Rural Telephone Association (WRTA) (hereinafter jointly referred to as "the Petitioners"), pursuant to Rule Sections 1.401, 1.415 and 1.421 of the Commission's Rules, hereby petition the Commission to issue a Further Notice of Proposed Rulemaking ("Further Notice") in the above captioned proceeding, in order to establish a record on which the Commission can design competitive bidding procedures in the manner mandated by Congress. As described below, in passing the Omnibus Budget Reconciliation Act of 1993 (the "Budget Act") on August 10, 1993, Congress and the President of the United States have created certain important substantive rights which the Commission is under a mandate to protect, in designing and implementing competitive bidding licensing procedures. These explicit rights did not exist prior to the adoption of the Budget Act, and therefore the record in the above captioned proceeding is silent as to how these rights can and should be protected. For the reasons set forth below, it is respectfully submitted that an

additional round of comments in this proceeding is necessary to ensure that an adequate record is developed, so that the Commission can adopt protections which reflect the input of the industry and the public (especially, those that are to be protected by the Congressional mandated safeguards). In any event, the proposals set forth herein should be considered.

In support of this petition, the following is shown:

I. Interest of the Petitioners

RMTA is a telecommunications association made up of nearly 90 members, including exchange carriers as large as U S West, several national holding companies and some 80 smaller commercial telephone companies, cooperatives and Native American-owned operations providing telephone services to their Reservation. All of the members of RMTA are engaged in providing telecommunications services throughout the Rocky Mountain region of the United States, including the states of Arizona, Colorado, Idaho, Montana, New Mexico, Utah and Wyoming, as well as portions of other bordering states. RMTA has participated in both the above captioned docket and the related ET Docket No. 92-9, governing the reallocation of the 2 GHz band to be made available for emerging technologies.¹

WRTA is an association representing a geographic area encompassing 488 telephone companies and telephone cooperatives of all sizes, serving both urban and rural areas throughout 23

¹ See June 5, 1992 RMTA Comments in ET Docket No. 92-9; July 6, 1992 Reply Comments in ET Docket No. 92-9; and January 8, 1993 Reply Comments in General Docket No. 90-314.

states west of the Mississippi (including Alaska), as well as three U.S. territories (including Guam, Micronesia and the Marshall Islands). Because the majority of rural areas in the United States are located west of the Mississippi, the membership of WRTA represents a substantial portion of all rural telephone companies in the country. RMTA members are included in WRTA's ranks, and the two associations are forming a western alliance to bring to the attention of the Commission and Congress the unique problems facing telephone carriers in this portion of the country. Many of the members of RMTA and WRTA likewise qualify as small businesses under applicable Federal statutes, and some of the members (including the above mentioned Native American-owned telephone operations) qualify as minority and/or women-owned businesses. Accordingly, it is respectfully submitted that RMTA and WRTA are uniquely situated to provide the Commission with useful information on how best to implement the protections for rural telephone companies, small businesses, and minority/women-owned businesses that are mandated in the Budget Act.

II. Congress has Created New Rights For Rural Telephone Operations which Require the Development of Special Safeguards, and Public Notice and Comment on These Safeguards is Necessary and Appropriate.

On August 10, 1993, the President signed into law the Budget Act, which, inter alia, amended Section 309 of the Communications Act of 1934, as amended (the Communications Act) so as to authorize the Commission to grant licenses by competitive bidding. Congress and the Administration view the creation of a

competitive bidding process as a means of raising over \$7 billion that can be used toward reducing the federal deficit. Spectrum "auction" proposals have been proposed in previous years, and have passed through various stages of the legislative process. However, each time, these spectrum auction proposals were defeated because of valid Congressional concerns that spectrum auctions would frustrate overriding public policy goals, such as the protection of small businesses, the implementation of universal service to rural America, the distribution of licenses over a wide geographic area, and protecting participation in the communications field by minorities and women. The 1993 Budget Act succeeded where the others failed, by providing crucial safeguards to ensure that the above policy objectives were not frustrated.

With regard to ensuring minority and female participation in broadcast services (so as to ensure that a diversity of interests are fairly represented in mass media), the Budget Act simply excluded mass media licenses from the competitive bidding process. With regard to the other above-mentioned goals, the Budget Act has included instructions to the Commission, to ensure provision of advanced services to rural Americans, and to protect the interests of rural telephone companies, small businesses, and businesses owned by members of minority groups and women. These protections include the following measures in the Budget Act:

- (1) A requirement (embodied in amended Section 309(j)(2) of the Communications Act) that the Commission will not implement

competitive bidding unless it finds that "a system of competitive bidding will promote the objectives described in paragraph (3)." These objective are designed to protect the interests described above.

(2) In particular, Paragraph (3) of amended Section 309(j) provides that the Commission "shall seek to promote the purposes specified in Section 1 of this Act and the following objectives:

(A) the development and rapid deployment of new technologies, products and services for the benefit of the public, including those residing in rural areas, without administrative or judicial delay;

(B) promoting economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small business, rural telephone companies, and businesses owned by members of minority business groups and women;

See Section 6002(a) of the Budget Act
(emphasis added).

(3) Congress did not find it adequate to leave the protection of universal service to rural areas, as well as the advancement of the interests of rural telephone companies and small and/or minority-owned businesses to the mere mention of these as a "licensing objective." Instead, amended Section 309(j)(4) mandates that the Commission adopt specific protection for these groups, by providing as follows:

Contents of Regulations -- in prescribing regulations
pursuant to Paragraph 3, the Commission shall --

(A) Consider alternative payment schedules and methods of calculation, including lump sums or guaranteed installment payments, with or without royalty payments,

or other schedules or methods that promote the objectives described in paragraph 3(B) and combinations of such schedules and methods;

* * *

(C) Consistent with the public interest, convenience and necessity, the purposes of this Act and the characteristics of the proposed service, prescribe area designations and bandwidth assignments that promote (i) an equitable distribution of licenses and services among geographic areas, (ii) economic opportunity for a wide variety of applicants, including small businesses, rural telephone companies and businesses owned by members of minority groups and women, and (iii) investment in and rapid deployment of new technologies and services;

(D) Ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum based services, and, for such purposes, consider the use of use of tax certificates, bidding preferences, and other procedures;

* * *

See Section 6002 of the Budget Act (emphasis added).

(4) Amended Section 309(j)(12) ensures that the Commission will not falter in its responsibilities to enact and enforce specific protections for these groups, by requiring that:

"not later than September 30, 1997, the Commission shall conduct a public inquiry and submit to the Congress a report --

* * *

(E) evaluating whether and to what extent --

* * *

(iii) competitive bidding methodologies have secured prompt delivery of service to rural areas and have adequately addressed the needs of rural spectrum users; and

(iv) small businesses, rural telephone companies, and businesses owned by members of minority groups and women were able to participate successfully in the competitive bidding process;

* * *

In its Notice of Proposed Rulemaking and Tentative Decision, General Docket No. 90-314, 7 FCC Rcd. 5676, 5710-11, Appendix E (released August 14, 1992) (hereinafter "August 14, 1992 NPRM"), the Commission solicited comments on competitive bidding procedures in general. However, nowhere does this document address the newly created rights of rural telephone companies and small/minority/women-owned businesses, since the Commission did not have before it the specific protections just passed by Congress. More importantly, the August 14, 1992 NPRM did not request comment on how the competitive bidding procedures should be modified to implement these protections. The Commission may have already decided internally that it will allow public participation in formulating the specific bidding procedures. However, out of an abundance of caution (in the absence of a public notice on this matter), the Petitioners wish to bring to the Commission's attention the numerous, compelling reasons for such participation. Moreover, Petitioners wish to make sure that the issue of how much spectrum is to be made available to these protected groups is the subject of public comment.

As indicated by the above-quoted language from the Budget Act, the Commission is not merely under a directive to consider rural telephone companies and rural service needs as an overall licensing goal. Instead, amended Section 309(j)(3) requires that

protection of rural interests be considered "in designing the methodologies for use" of competitive bidding, and Section 309(j)(4) more specifically states that "in prescribing regulations pursuant to paragraph (3), the Commission shall. . . ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum based services, and, for such purposes, consider the use of tax certificates, bidding preferences, and other procedures;. . . ." This constitutes a clear mandate to the Commission to incorporate specific protections for rural services and rural telephone companies into the competitive bidding rules which the Commission must now formulate. It is respectfully submitted that consideration of these licensing objectives in formulating the competitive bidding rules can only be properly accomplished through a notice and comment rulemaking proceeding. As discussed below, while the competitive bidding rules may be considered procedural in many respects, the safeguards mandated by Congress clearly embody substantive rights.

Moreover, as further discussed below, Congress' mandate to further the interests of rural telephone companies directly impacts on the Commission's proposal to exclude entities with an interest in a cellular operations from eligibility for a PCS license, in a way that commentators in General Docket No. 90-314 could not have foreseen previously. Also, this mandate impacts on the Commission's decision on how to divide the PCS spectrum

into licensed frequency blocks. Therefore, even though the Commission is on a relatively expedited timetable for issuing PCS rules (i.e., the 180 days prescribed by Section 6002(c)(1)(D) of the Budget Act), it is respectfully submitted that Congress's clear intent and the public interest mandate of the Communications Act require public participation in this phase of PCS rule formulation.

A. The Newly Created Preference Rights Necessitate the Issuance of a Further Notice

1. Reopening This Proceeding Is Warranted

Because the Budget Act created preference rights after the running of the comment cycle in this proceeding, this proceeding should be reopened so that comments may be submitted on the use of preferences in auctions.

The Commission has established standards for reopening hearing proceedings and has adopted the standards in the context of a rulemaking proceeding. These standards require the petitioner to show there is newly discovered evidence, that the petitioner could not have known the facts at the time the petitioner had opportunity to introduce such facts, and that the evidence will affect the ultimate decision. See Regulatory Policy Regarding the Direct Broadcast Satellite Service, 53 R.R.2d 1637, 1641-42 (1983) (applying standards for reopening hearing proceedings in considering whether to reopen a rulemaking proceeding); Southeast Arkansas Radio, Inc., Dermott, Arkansas, 61 FCC 2d 72, 74 (1976) (standards for reopening hearing).

These standards are satisfied here. As noted above, when comments and reply comments were due in this proceeding, Congress had not passed the Budget Act. The Petitioners could not have known that the Budget Act would have been passed when it was, or what its terms would be. In addition, the public interest requires that the Budget Act be considered as the Commission develops the final rules in this proceeding, for the Budget Act is not merely new "evidence", but constitutes a new congressional mandate that will have a direct bearing on the outcome of this proceeding.

In addition to supporting the reopening of this rulemaking proceeding, Commission precedent supports the establishment of a supplemental comment period. For example, in ET Docket No. 92-9, in the middle of the initial comment cycle, the Commission established a supplemental comment cycle to obtain comment on an NTIA report that was introduced into the record late in the comment cycle. See Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, 7 FCC Rcd. 6100, 6100 n.3 (1992); see also Deregulation of Radio, 46 R.R.2d 1201, 1204 (1980) (providing that a 30-day comment period would be established for public comment on new data, regardless of when that data would be released in relation to the comment cycle); Cable Television Syndicated Program Exclusivity Rules, 48 R.R.2d 139, 143 n.11 (1980) (a further period of time was allowed so interested persons could comment on a new study); Telephone Company-Cable Television Cross-Ownership Rules, 3 FCC

Rcd. 7012, 7012 (Com. Car. Bur. 1988) (extending time to file comments based on Commissioner's statement issued after Notice and raising additional issues).

Thus, based on Commission precedent for reopening proceedings to obtain comment on new information, and based on considerations of fairness and the public interest, this proceeding should be reopened and a supplemental comment period should be established to consider the preference provisions in the Act. Indeed, Congress contemplates public participation in formulating the Budget Act's protections. Thus, amended Section 309(j)(12) requires the Commission to conduct "a public inquiry" in compiling its report on the effectiveness of these protections. It would be nonsensical to solicit public participation only after the competitive bidding procedures have already been in use for three years.

2. The Preference Rules Are Substantive and Should Be Promulgated By Notice and Comment Rulemaking

Although Commission precedent requires the reopening of this proceeding and the establishment of a supplemental comment period, this proceeding further requires adherence to the notice and comment procedures of the Administrative Procedure Act (APA), due to the substantive nature of the preference rules which would result. Thus, as demonstrated below, while the Commission's Rules permit the issuance of a further notice, a Further Notice is required by the APA.

a. The Commission's Rules Permit the Issuance of a Further Notice

The commencement of a further rulemaking is permitted pursuant to Section 1.421 of the Commission's Rules, which provides:

In any rulemaking proceeding where the Commission deems it warranted, a further notice of proposed rulemaking will be issued with opportunity for parties of record and other interested persons to submit comments

The Commission recently acted in accordance with this rule by issuing a further notice in ET Docket No. 92-9, the companion emerging technologies proceeding. In that proceeding, the Commission had initially issued a notice of proposed rulemaking establishing a comment cycle ending on May 21, 1992. On May 22, 1992, Alcatel Network Systems, Inc. filed a petition for rulemaking. In response, the Commission solicited comment on the petition for rulemaking, and later issued a further notice of proposed rulemaking in that same proceeding. Redevelopment of Spectrum to Encourage Innovation in the Use of new Telecommunications Technologies, 7 FCC Rcd. 6100 (1992).

Thus, the Commission has adequate support in its Rules, and in recent PCS proceedings, for granting petitions for rulemaking during the pendency of a rulemaking. Given the uncharted territory created by the enactment of the Budget Act, continued flexibility in allowing public participation in this proceeding is clearly warranted.

b. The Substantive Nature of the Preference Rules Requires a Notice and Comment Rulemaking

Any rules concerning these preferences would necessarily state the value the Commission would place on rural telephone companies being awarded PCS licenses, thereby affecting their ability to obtain PCS licenses. The rules therefore would "encode a substantial value judgment" on whether rural telephone companies should receive PCS licenses, and "'grant rights . . . or produce other significant effects'" on their interests. American Hospital Ass'n v. Bowen, 834 F.2d 1037, 1045, 1047 (D.C. Cir. 1987) (citation omitted); see Pickus v. United States Board of Parole, 507 F.2d 1107, 1112-13 (D.C. Cir. 1974) (parole board guidelines establishing specific factors for determining parole eligibility which were calculated to have a substantial effect on ultimate parole decisions were substantive); Reeder v. FCC, 865 F.2d 1298, 1305 (D.C. Cir. 1989). The D.C. Circuit has held that such rules are substantive.

By being substantive, these rules do not meet the exceptions to notice and comment requirements provided in Sections 553(b) and (d) of the APA. 5 U.S.C. § 553 (b), (d). Thus, the preference rules must be promulgated pursuant to a notice and comment rulemaking. Id.; see American Hospital Ass'n v. Bowen, 834 F.2d at 1044-48; Pickus, 507 F.2d at 1112-13 (substantive rule required notice and comment rulemaking).

Additionally, as discussed above, there is a significant need for participation by affected parties in the development of preference rules. This fact alone would rule out the possibility

of exemptions from the APA's notice and comment proceedings. See Batterton v. Marshall, 648 F.2d 694, 704 (D.C. Cir. 1979); American Bus Ass'n v. United States, 627 F.2d 525, 528 (D.C. Cir. 1990) (legislative history of the APA contains warnings that the exceptions in § 553 should not be used to escape having public participation in rulemakings).

In this regard, the Administrative Conference of the United States (ACUS) has advised agencies to voluntarily use notice and comment rulemakings. Recommendation No. 76-5; Interpretive Rules of General Applicability and Statements of General Policy, 1 C.F.R. § 305.76-5. Even if it were assumed arguendo that notice and comment procedures were not required, because of the great public interest in participating in such a rulemaking (as discussed supra), it is respectfully submitted that the Commission should reopen the rulemaking and voluntarily conduct a further notice and comment proceeding.

c. Issuance of a Further Notice Would Still Allow Compliance with the Act's Deadline

The Act requires the Commission to adopt preference rules within 180 days. Thus, the rules must be adopted by March 10, 1994. A Further Notice could be issued in this proceeding and Commission action still could be completed within the time frame established in the Act.

III. The Budget Act Renders Moot the Commission's Proposed Cellular Ban, as it Applies to Rural Telephone Companies.

As discussed above, Congress enacted the Budget Act with very specific safeguards for rural services and rural telephone

companies, in order to eliminate its overriding concerns that the use of competitive bidding would frustrate important policy goals, such as universal service. Indeed, amended Section 309(j)(1) of the Act provides that the Commission shall only have authority to license "through the use of a system of competitive bidding that meet the requirements of this subsection." Thus, the Commission's competitive bidding authority is contingent on the implementation of rural service and rural telephone company protections. The Commission has previously recognized that "there is a strong case for allowing LECs [local exchange carriers] to provide PCS within their respective service areas." See August 14, 1992 NPRM at paragraph 75. And indeed, as explained in RMTA's January 8, 1993 Reply Comments, PCS is a natural extension of local exchange service, and may someday constitute the technology whereby all or most exchange services are provided. Telephone companies have the resources, institutional experience, and expert personnel to develop the most effective ways of providing exchange service via this new technology; and for small telephone companies (and especially cooperatives), preventing these entities from providing PCS would preclude participation of the residents of the rural communities from having a say in what new services would be provided, and how. See RMTA Reply Comments at pp. 2-3. Despite the Commission's recognition of these factors, its proposal currently on the table would indirectly exclude participation of rural telephone companies in the provision of PCS within their

certificated service areas. The Commission currently proposes to prevent entities with an interest in a cellular license from providing PCS within the cellular service area. See August 14, 1992 NPRM at paragraphs 63-70. This is due to the concern that cellular operations will have an incentive to engage in anticompetitive behavior with regard to PCS operations. Id. Most rural telephone companies have some interest in the wireline (Block B) cellular license that provides service in or near the telephone companies' metropolitan statistical area (MSA) or rural service area (RSA).

Because rural telephone companies have historically only been interested in providing service within their certificated area, these carriers have little or no interest in being licensed for PCS outside of the cellular service area, because the cellular service area usually includes their certificated region. Moreover, many of these rural telephone companies hold only a small percentage of ownership in the cellular entity in their particular area, based on settlements with larger wireline entities. Indeed, in most cases, rural telephone companies are limited partners with little or no control over management decisions. Nonetheless, the Commission's current proposal would preclude a rural telephone company from having an interest in a PCS application if it has a 1% or greater interest in a cellular license. Thus, the practical effect of the Commission's proposed restriction on cellular eligibility would be to preclude the

majority of telephone companies from providing PCS to their existing and potential telephone subscribers.

It is respectfully submitted that this de facto proposal to restrict rural telephone eligibility for PCS licenses directly contradicts the protections which Congress repeatedly emphasized in the Budget Act. Therefore, this proposed restriction on cellular eligibility, as it applies to rural telephone companies, cannot stand. The Petitioners respectfully request that the Commission issue a Further Notice which modifies the proposed cellular eligibility restriction, to make it clear that it does not apply to rural telephone companies wishing to provide PCS within their certificated areas. To do otherwise would flout the overriding concerns of Congress, and jeopardize the auction authority in its entirety, by defying the requirement of Section 309(j)(1) of the Act that competitive bidding procedures accomplish the objectives identified by Congress.

IV. The Commission Should Implement Explicit Protections for Rural Telephone Companies.

Because of the extreme value which will be placed on PCS spectrum, and the "gold rush" mentality which will no doubt sweep up the licensing process (as has been the case for cellular and other licensing processes), the Commission should adopt very explicit protections for rural telephone companies. Otherwise, the mandate of Congress will not be properly implemented. Inasmuch as the Petitioners represent a substantial portion of the rural telephone companies in the United States, and many of Petitioners' constituent members are small businesses and/or

minority/female-owned businesses, the Petitioners believe that they are situated to provide useful insight as to how the Congressionally mandated protections should be implemented. At a minimum, it is respectfully requested that the Commission place the following suggestions on the record, and consider them in issuing a decision. More preferably, the Commission should include these suggestions in a Further Notice, so that the public will have the benefit of the Petitioners' ideas as a sounding board in developing the record to be used in implementing the competitive bidding procedures.

The rural telephone protections built into the Budget Act have two equally important bases: the first (embodied in amended Section 309(j)(3)(A)) is to ensure service to rural areas. This concern is based on the fact that providers of advanced services are generally driven by a profit motive, and therefore will often target only densely populated areas or high volume users for these services. Historically, rural communities have depended on their telephone companies to make available advanced services (such as paging and cellular). In this regard, the western United States is faced with a unique population dynamic. The eastern half of the United States is made up of urban areas surrounded by suburbs which often extend to the next city. However, in the west, major cities are often surrounded by rural areas. Thus, one can drive but a few minutes from the city limits of Phoenix, Las Vegas, or Albuquerque and find themselves in a sparsely populated desert area. This creates the danger

that the successful bidders for all of the available blocks of PCS spectrum in a given western region will propose systems serving only the major city within the designated filing area, leaving the surrounding rural areas largely unserved. However, their successful bid will preclude the licensing of rural telephone companies to provide service to those outlying smaller communities.

The Budget Act also specifically protects rural telephone companies (as well as small businesses, and minority/women-owned businesses) in order to ensure that there is "economic opportunity for a wide variety of applicants," and "an equitable distribution of licenses and services among geographic areas." These concerns are in keeping with the present administration's goals, as well as the longstanding mandate of Section 1 of the Communications Act.

Protection of rural telephone companies is vital for a related but distinct reason. Rural telephone companies have committed themselves to undertake service to sparsely populated, high cost areas. Profit margins for service to these areas is not high. Indeed, in many rural areas, the residents received telephone service only by forming their own telephone cooperative, with each resident owning a share of the company. To the extent that PCS providers may see fit to serve rural areas, they will no doubt target the higher-volume business customers that currently receive service from rural telephone companies. This "cherry picking" could deprive many rural

telephone companies of their major source of revenues, which will significantly drive up the costs of providing service. Indeed, some rural telephone companies could eventually be forced out of business. Thus, at stake is not merely the provision of advanced services to rural communities, but also the continued provision of affordable basic telephone service. If the telephone companies are not allowed to compete in the provision of PCS as an enhanced substitute for local exchange service, many rural residents may soon find themselves without telephone service. The following licensing procedures are designed to avoid this anomalous result.

A. The Commission should establish a frequency block for rural telephone service.

The Commission has proposed dividing available PCS spectrum into either four or five frequency blocks. It is anticipated that at least one block of spectrum will be licensed on a nationwide basis, and that the remaining blocks will be licensed on a regional basis, either encompassing major trading areas (MTAs) or basic trading areas (BTAs), as these terms are defined by Rand McNally. In order to ensure that the dual congressional mandates of service to rural areas and protection of rural telephone companies are met, the most desirable approach would be to set aside one frequency block within each MTA or BTA (whichever is the smallest geographic area for which licenses will be issued) for rural telephone use, if that MTA or BTA contains rural areas. Rural areas would be defined as any

exchange areas within a telephone company's certificated service area which encompassed none of the following:

- (1) Any incorporated or unincorporated place of 10,000 inhabitants or more, or any part thereof;
- (2) Any other territory, incorporated or unincorporated, included in an "urbanized area," as defined by the Bureau of Census.

See Second Report and Order, CC Docket No. 87-266, 7 FCC Rcd. 5781 (1992).

In order for the rural telephone companies to stave off harmful skimming of its business customers, the spectrum allocated for rural telephone licensing must be equal in bandwidth, etc., to the allocations made for other licensees. Otherwise, the telephone companies will be unable to compete on equal footing.

This approach would guarantee that every rural telephone company would have the opportunity to provide PCS service within its certificated service area (thereby helping to ensure the continued financial viability of the carrier), and would ensure that the residents of rural areas would have an equal opportunity to access advanced PCS-type services. Because four or five other frequency blocks would be available for PCS licensing, there would be more than adequate opportunity for competition, and for service to high density population centers.

The bid to be submitted by telephone companies for this license should be calculated as follows: All telephone companies